

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER02-111-006
ER02-111-007
ER02-652-004

ORDER ON COMPLIANCE
AND REHEARING

(Issued May 20, 2003)

1. On March 26, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing in response to an order issued by this Commission on February 24, 2003.¹ In that order, the Commission approved a contested settlement, with modification, subject to the Midwest ISO filing revised tariff sheets to reflect the commitments made by the parties.
2. On or before March 26, 2003 Consumers Energy Company (CECo) and the Public Service Commission of the Commonwealth of Kentucky (Kentucky Commission) filed timely motions for clarification or, in the alternative, requests for rehearing, of the February 24 Order.
3. In this order, we accept the Midwest ISO's compliance filing while clarifying the treatment of regulatory assets and the application of the cost recovery deferral mechanism that was approved in the settlement. This order benefits transmission customers of the Midwest ISO by clarifying the intended terms of the settlement.

I. Background

¹Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,193 (2003) (February 24 Order).

4. In the February 24 Order, the Commission approved a contested partial settlement (Settlement) which resolved many of the issues that were raised in the captioned dockets. The sole contested issue, not resolved in the Settlement, was whether costs which transmission owners (TOs) claim are not recoverable in the current rates being charged to their customers can be booked as regulatory assets for accounting and possible future recovery purposes.

5. In the certification of the Settlement,² the settlement judge noted that the parties could not reach agreement with respect to proposed Section 2.13 of Article II of the Settlement.³ As proposed, Section 2.13 required that any payments of Schedule 10 charges which a Transmission Customer under the Midwest ISO OATT cannot recover from its customers, together with interest calculated in accordance with the Commission's regulations, represent a regulatory asset under the Commission's Uniform System of Accounts and is properly classified in Account No. 182.3, Other Regulatory Assets. Section 2.13 also provided that the parties to the Settlement agree that any order approving this Settlement should provide assurance for probable recovery of such regulatory assets through future revenues.⁴

6. While the February 24 Order directed that Section 2.13 be deleted from the Settlement, in recognition of some parties' concerns that they may be unable to collect ISO Cost Adder charges, we held that we would permit those parties, at their discretion, to make a rate filing with the Commission clearly demonstrating and supporting that such costs are, indeed, currently unrecoverable. At the appropriate time, any interested persons may file in opposition to such filing. However, if a party can demonstrate that such costs are

²Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 63,040 (2002).

³Section 2.13 of the Settlement states:

Regulatory Asset. By its approval of this Settlement, the Commission agrees that any payments of Schedule 10 charges which a Transmission Customer under the Midwest ISO OATT cannot recover from its customers, together with interest calculated in accordance with Section 35.19a(a)(2)(iii)(A) of the Commission's regulations, represents a regulatory asset under the Commission's Uniform System of Accounts properly classified in Account No. 182.3, Other Regulatory Assets. The Parties agree that the order approving this Settlement should provide assurance for probable recovery of such regulatory assets through future revenues.

⁴February 24 Order at P 6-7; see Id. at P 8-12.

unrecoverable, the Commission will permit it to book such costs as a regulatory asset under the Commission's Uniform System of Accounts and record them in Account No. 182.3, Other Regulatory Assets.⁵

7. While we made no determination that the parties can, in fact, account for these costs as regulatory assets, we held that our determination to permit the TOs to track these costs and present the issue to us in a future cost-recovery rate filing struck the appropriate balance, and was reasonable in light of the positions expressed by the parties.⁶

II. Compliance Filing

8. In its compliance filing, the Midwest ISO revised Schedule 10 and Schedule 10-A of its OATT to reflect the commitments made in the Settlement. Among the revisions to Schedule 10, the Midwest ISO revised Section 2.1 (Settlement Credits) to reduce the costs to be recovered under Schedule 10 by a credit of \$25 million and specified that the credit will be deferred and recovered over a five-year period beginning February 1, 2008. Section 2.4 was also revised to reflect the agreement of the parties to move towards increasing the use of MWhs as an energy-based billing determinant.

9. In addition, Section II of Schedule 10-A was revised to add references to the terms of the Settlement. Sections II and IV were also revised to give effect to the rate and credit calculation methodology provided for in the Settlement. The Midwest ISO also revised Section III to provide a methodology to calculate the Schedule 10-A charges using the rates and credits established in the revised Section II. The Midwest ISO requests an effective date of March 1, 2003 in order to permit it to employ invoicing under Schedules 10 and 10-A in early April 2003.

10. Notice of the Midwest ISO's compliance filing was published in the Federal Register, 68 Fed. Reg. 17,621 (2003), with motions to intervene and protests due on or before April 16, 2003. CECo and Wisconsin Electric Power Company (WEPCO) filed comments.

11. In their comments, CECo (consistent with its request for rehearing discussed at greater length below) and WEPCO state that, in accordance with the terms of Section 2.1 of the Settlement, \$17 million of the \$25 million Settlement Credits should benefit only those entities that were transmission service customers of transmission owners (TOs) that were Midwest ISO TOs as of February 24, 2003.

⁵February 24 Order at P 16; see 18 C.F.R. Part 101, Account No. 182.3 (2002).

⁶February 24 Order at P 17.

12. WEPCO also states that the Midwest ISO should clarify when it will file protocols for the unbundling of services. Under Section 2.5 of the Settlement, WEPCO notes that the Midwest ISO is required to negotiate a filing with the parties that addresses the issue of developing a menu of services or unbundling of services applicable to all customers paying the Schedule 10 charges. Since the Midwest ISO's compliance filing did not expressly address the obligation contained in Section 2.5 of the Settlement, WEPCO states that the Midwest ISO should clarify any steps it has already taken to fulfill this requirement and to provide a timeline in which it will address this issue.

III. Requests for Rehearing

13. CECco states that Section 2.1 of Article II of the Settlement provides for a two-year cost recovery deferral totaling \$25 million for the years 2002 and 2003.⁷ As such, CECco requests that the Commission clarify that it approved Section 2.1 to be applicable to monthly Schedule 10 charge calculations during the 2002-2003 period. Further, CECco states that, since the Settlement was not approved until 2003, the Midwest ISO may be confused as to how it will apply the \$25 million in cost recovery deferral credits. CECco therefore requests that the Commission instruct the Midwest ISO to propose a plan to implement the intended terms of Section 2.1.

14. CECco additionally asks that the Midwest ISO allocate the cost recovery deferral credit for 2002 (\$17 million) to only those parties who were customers of the Midwest ISO's TOs on February 24, 2003 (the date of the Commission's order approving the Settlement). CECco's concern is that, otherwise, additional TOs who have or may become members of the Midwest ISO later in 2003 would unjustly share in the cost recovery reductions for 2002. CECco states that it would be inappropriate to allow these newly added TOs to receive the same benefits that were intended to be directed only to the Midwest ISO's then-existing members and the parties to the Settlement.

15. Kentucky Commission requests clarification of the Commission's decision to allow parties to make a rate filing to receive regulatory asset treatment solely by demonstrating and supporting that such costs are unrecoverable.⁸ Kentucky Commission specifically requests that the Commission clarify that any rate filings for regulatory asset treatment would affect only wholesale rates and not involve treatment of costs subject to recovery in bundled retail rates. Kentucky Commission states that the recoverability of deferred costs in future bundled retail rates is a matter within the scope of state jurisdiction and that any

⁷The cost recovery deferral credit is \$17 million for 2002 and \$8 million for 2003.

⁸February 24 Order at P 16.

decision made by this Commission with respect to deferred costs in future bundled retail rate recovery would intrude into matters involving the retail ratemaking authority of state commissions.

16. Additionally, the Kentucky Commission requests clarification that the Commission has not established a new standard by which regulatory asset treatment will be permitted, (a standard that merely requires a showing that costs are unrecoverable in existing rates), and has not replaced the existing standard, (which requires a showing that it is probable that costs will be recoverable in future rates). Kentucky Commission states that there is no basis or reasoned explanation for departing from the existing standard and therefore assumes that the Commission did not intend to create a new standard for regulatory asset treatment.

IV. Discussion

17. The Commission finds that the Midwest ISO's compliance filing generally complies with the directives contained in the February 24 Order, subject to certain modifications as addressed below, and we address the requests for rehearing accordingly.

1. Section 2.1 of the Settlement

18. As explained above, Section 2.1 of the Settlement provides for a two-year cost recovery deferral. Under this provision, \$17 million in credits were to be provided in 2002, and \$8 million in credits for 2003. However, since the Settlement was not approved until 2003, CECo expressed concern over how the Midwest ISO would apply the \$25 million in cost recovery deferral credits since part of the period has since elapsed. In response, the Commission directs the Midwest ISO to propose in the revised compliance filing we order below a plan to implement the terms of Section 2.1, consistent with the intent of the parties.

19. In this regard, the Commission therefore directs the Midwest ISO to revise its tariff to provide that it will allocate the \$17 million credit to only those entities who were customers of TOs that were Midwest ISO TOs as of February 24, 2003. However, the 2003 credit of \$8 million should be allocated to all customers of all of the Midwest ISO's TOs, even new TOs which joined the Midwest ISO after February 24, 2003.

2. Section 2.5 of the Settlement

20. As noted by WEPCO, the Midwest ISO's compliance filing did not expressly address the Midwest ISO's obligation, as contained in Section 2.5, to negotiate a filing with the parties that addresses the issue of developing a menu of services or unbundling of

services applicable to all customers paying the Schedule 10 charges. Accordingly, the Midwest ISO is directed in the revised compliance filing we order below to explain any steps that it has already taken to fulfill this requirement and to explain when it intends to file protocols for the unbundling of services.

3. Regulatory Asset Treatment

21. In the February 24 Order, we found that based on the record before us recognition of a regulatory asset for unrecovered Schedule 10 adder costs was not appropriate. We also held, however, that TOs could make a future filing for Commission approval to record unrecovered Schedule 10 adder costs as a regulatory asset.⁹ We add in response to Kentucky Commission's motion for clarification that, as Schedule 10 is part of the Midwest ISO's OATT, Schedule 10 is a Commission-jurisdictional rate schedule and the rate charged under Schedule 10 is a Commission-jurisdictional rate.

22. With respect to the Kentucky Commission's concern as to the standard to review rate filings for regulatory asset treatment, we clarify that we will continue to apply the existing standard as set forth in 18 C.F.R. Part 101, Account No. 182.3 (2002). Accordingly, any parties requesting regulatory asset treatment will be required to demonstrate that the costs at issue are both unrecoverable in existing rates and that it is probable that such costs will be recoverable in future rates.

The Commission orders:

(A) The Midwest ISO's compliance filing of March 26, 2003 is hereby accepted, subject to modification and clarification, as discussed above.

(B) The Midwest ISO is hereby directed to make a revised compliance filing within 30 days of the date of this order reflecting the modifications discussed in the body of this order.

(C) CECo and Kentucky Commission's motions for clarification and requests for rehearing are hereby granted, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

⁹February 24 Order at P 17; accord Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,192 at P 26-30 (2003).

Magalie R. Salas,
Secretary.